IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs January 8, 2008

STATE OF TENNESSEE v. BRANDON McCOY

Direct Appeal from the Circuit Court for Maury County
No. 15820 Robert L. Jones, Judge

No. M2007-00421-CCA-R3-CD - Filed April 18, 2008

The defendant, Brandon McCoy, was convicted of two counts each of attempted second degree murder, attempted especially aggravated robbery, and attempted aggravated robbery and received an effective twenty-four-year sentence in the Department of Correction. He argues that the evidence was insufficient to support his convictions, his sentences are excessive, and the trial court erred in imposing consecutive sentences. We conclude that the evidence was sufficient to support the defendant's convictions and that the trial court did not abuse its discretion in setting the length of his sentences. However, because the trial court imposed consecutive sentencing based on the dangerous offender criterion without making the factual findings required by State v. Wilkerson, 905 S.W.2d 933, 938 (Tenn. 1995), we remand to the trial court for resentencing. Additionally, we remand for entry of corrected judgments in Counts 3 and 4 to reflect that the conviction offense, attempted especially aggravated robbery, is a Class B felony.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed and Remanded for Resentencing and Entry of Corrected Judgments

ALAN E. GLENN, J., delivered the opinion of the court, in which DAVID G. HAYES and J.C. MCLIN, JJ., joined.

Robert C. Richardson, Jr., Columbia, Tennessee, for the appellant, Brandon McCoy.

Robert E. Cooper, Jr., Attorney General and Reporter; Preston Shipp, Assistant Attorney General; T. Michel Bottoms, District Attorney General; and Daniel J. Runde, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

At trial, Officer Brad Ribley of the Columbia Police Department testified that he was dispatched to 501 West 12th Street at 3:37 a.m. on July 2, 2005. When he arrived, he spoke with one of the residents, José Rodriguez, summoned emergency medical services, and called his supervisor. Officer Ribley observed blood on the concrete steps leading to the back door, and inside the house he saw a Hispanic male who was bleeding and appeared to have been shot in the chest and arm and another male who had been shot in the arm. He noticed a large amount of blood in the kitchen and a set of bloody footprints leading from the kitchen to the bathroom.

On cross-examination, Officer Ribley testified that there were beer bottles and cartons inside the house and recalled seeing a bullet hole in the east wall of the living room, facing Galloway Street. In response to defense's counsel's question, "Did any of the people there in the home that night seem intoxicated or appear intoxicated to you?", he replied, "They had the odor of alcohol[ic] beverage on their breath and about their person." Although this response is unclear, we discern from our review of the record that Officer Ribley was referring to all of the occupants of the house.

Guadelupe Fernandez testified that on July 1, 2005, he went to the home of a friend, Lorenzo, at 501 West 12th Street around 9:00 or 10:00 p.m. to celebrate the birthday of another friend, Mario Lacan. José Rodriguez, Ernesto Landin, and Miguel Rodriguez were also present, and all were drinking beer. Fernandez acknowledged that he drank "quite a few" beers that night. When the men ran out of beer between 2:00 and 2:30 a.m., Fernandez, Landin, and José Rodriguez drove to a Kwik-Sak on Carmack Boulevard to purchase more. While Landin was inside purchasing the beer, a car containing two girls, a white man, and the defendant pulled up beside Fernandez and Rodriguez, who were waiting outside in Landin's car. The defendant approached Fernandez and Rodriguez and asked to borrow a cellular phone. After informing the defendant that they did not have a phone, Landin returned to the car and they left. The defendant returned to the other vehicle, which followed Landin's car back to 501 West 12th Street. When they arrived at their destination, Fernandez and Landin entered the house, and Rodriguez stopped to speak with the defendant's group. Afterwards, Rodriguez entered the house and the defendant's group left.

Fernandez testified that around twenty minutes later, the defendant, accompanied by two white males, returned to 501 West 12th Street and knocked on the door. When Rodriguez answered the door, the defendant pointed a pistol at him. The other two men also had guns. The defendant ordered Rodriguez to give him money, and Rodriguez replied, "I don't have no money. If you want to shoot me, shoot me." Rodriguez then ducked behind a couch and the defendant shot Mario Lacan. When the shooting began, Fernandez and the other partygoers attempted to run to a bedroom. He said that the defendant and the other two assailants demanded money from and aimed guns at all of the partygoers. After the shooting ceased, he saw Ernesto Landin bleeding from his arm and Mario Lacan bleeding from his back and arm.

On cross-examination, Fernandez acknowledged that he was a "little" drunk that night. He could not recall what clothing the defendant was wearing but remembered that he was wearing a bandanna. He testified that the defendant brandished a small black gun, and the entire incident lasted

between five and ten minutes. He said that there were no guns at the residence before the three assailants arrived.

José Rodriguez testified that he arrived at 501 West 12th Street between 10:30 and 11:00 p.m. on July 1, 2005, and began drinking beer with the other partygoers. When they ran out of beer, he accompanied Landin and Fernandez to the Kwik-Sak in Landin's vehicle. He gave Landin money to purchase more beer and remained in the vehicle with Fernandez. While waiting, a red two-door car pulled up beside their vehicle. Rodriguez saw two white females in the front seat, and two white males and a black male in the backseat. The defendant exited the car and asked if he could borrow a cellular phone, and Rodriguez and Fernandez informed him that they did not have a phone. After Landin returned with the beer and they drove off, the red car followed Landin, Rodriguez, and Fernandez back to 501 West 12th Street. When they arrived, the defendant asked Rodriguez to come to him, but the car drove away before he reached it so he returned to the house. Fifteen to twenty minutes later, the defendant and two white males returned and knocked on the door. Rodriguez answered the door, and the defendant put a gun to his chest. The defendant demanded money, and Rodriguez replied, "I ain't got no money, man. You can kill me." The defendant said he would kill Rodriguez if he did not surrender his money, and Rodriguez told him to "go ahead." Rodriguez testified that he jumped behind a couch and the defendant began shooting. He testified that he thought the three assailants intended to rob each of the partygoers and that they pointed guns at each of them. On cross-examination, Rodriguez testified that he saw the defendant fire one shot from a black nine millimeter or .380 caliber semiautomatic handgun.

Ernesto Landin testified that he arrived at Mario Lacan's birthday party around 8:00 p.m. His testimony regarding the trip to Kwik-Sak was substantially similar to that of Rodriguez and Fernandez. When they arrived back at 501 West 12th Street, Landin saw a red car containing two white males, two white females, and the defendant park behind their car. He went inside the house and resumed the celebration while Rodriguez spoke to the people in the car. Later, when Rodriguez answered the knock on the door, Landin saw the defendant, accompanied by two white males, enter the apartment with a gun and demand money from Rodriguez. After Rodriguez jumped behind the couch, Landin saw the defendant shoot Lacan, and said that one of the bullets hit him after passing through Lacan. He noticed that the defendant's gun was a black semiautomatic but was unsure of its caliber. He testified that a bullet remained lodged in his arm for approximately one week before a doctor removed it and gave it to the police.

On cross-examination, Landin acknowledged consuming seven to eight beers that night. He testified that the heavier of the two white male assailants also fired his weapon. He said that on the night of the shooting the defendant had short hair and was wearing a red headband. He testified that, immediately prior to the shooting, Rodriguez reached into his pocket to retrieve his cellular phone. He denied that any of the partygoers had a gun or argued over drugs that night.

Mario Lacan testified that he arrived at 501 West 12th Street around 11:00 p.m. on July 1, 2005. He said that after his three friends returned from the Kwik-Sak, he was sitting in a chair drinking beer when he heard two shots. He saw only two assailants and did not see them enter the

house. However, he testified that the defendant was one of the assailants. He could not recall how many shots were fired but said he was shot in the ribs, the left arm, and the back. Lacan was transported to Vanderbilt University Medical Center for treatment, where he remained for three or four days.

On cross-examination, Lacan testified that he did not see who shot him and was unable to describe the white male assailant he saw. He acknowledged that he was drunk on the night of the shooting. He said the defendant was about eight feet away from him when he was shot. After he was shot, he fell to the floor and saw the defendant firing a black weapon. Asked what the defendant wore on the night of the shooting, Lacan could recall only that he wore a headband.

Teri Arney, a firearms examiner with the Tennessee Bureau of Investigation, testified that in connection with this case she examined a black .380 caliber Lorcin semiautomatic handgun and a silver .357 caliber four-shot derringer handgun, as well as cartridge cases and bullet fragments recovered from the crime scene. She concluded that the bullet recovered from Ernesto Landin was fired from the Lorcin, and a bullet fragment recovered from Mario Lacan was fired from the derringer. Two other cartridge cases recovered at the scene had been fired from the Lorcin, and two cartridge cases and a bullet recovered from a neighboring house had been fired from the derringer.

Columbia Police Officer Paul McCormick testified that at approximately 3:00 a.m. on July 2, 2005, he was patrolling in the area of West 12th and Galloway Streets when he noticed a red Pontiac Sunfire known to him to be driven by Tiffany Beaver. He observed four individuals in Beaver's car and a Hispanic male leaning into the passenger's side window. As he passed by, the Sunfire drove off and the Hispanic male walked back to the residence. Shortly thereafter, he received a call concerning a shooting at 501 West 12th Street. Officer McCormick returned to the scene and told other officers that he recently had seen Beaver's car outside the residence. He spoke with José Rodriguez, whom he recognized as the Hispanic male who had been leaning into Beaver's car, and asked a fellow officer to go to the Graymere Apartments where Beaver lived to see if he could locate her car. The officer located the car and Officer McCormick drove to the apartment complex to speak with Beaver.

When Officer McCormick arrived at Beaver's apartment, she and Christy Conner were present. While he was speaking with Beaver, she received a phone call and permitted him to listen in. The male caller, who seemed somewhat excited, asked Beaver to pick him up at "Jake and John's" house. Officer McCormick instructed Beaver to agree to pick up the caller and then drove her and Conner to 1908 Lynnwood Drive. After Beaver and Conner pointed out "Jake and John's" house, Officer McCormick drove them back to the Graymere Apartments and then returned to Lynnwood Drive. He parked his patrol car, walked toward 1908 Lynnwood Drive, and hid behind a van parked in front of the house. After about twenty minutes, he saw a white male exit the front door of the house. Shortly thereafter, a second white male and the defendant exited the house. Officer McCormick emerged from behind the van and identified himself, and the defendant and white male fled behind the house. After a brief pursuit, Officer McCormick apprehended the white male, but the defendant scaled a fence and evaded capture. Simultaneously, Officer Archibald, who

had been sent to assist Officer McCormick, detained three suspects in the front yard. Officer McCormick searched the backyard of 1908 Lynnwood Drive and discovered the Lorcin, the derringer, and a bag containing clothing.

Detective Jeff Duncan of the Columbia Police Department was called to 1908 Lynnwood Drive to assist in the investigation of the shooting. He interviewed John Stephenson, one of the four individuals detained by Officers Archibald and McCormick. He asked Stephenson to sign a form waiving his Miranda rights and noticed that, as Stephenson signed the waiver, he held his right arm under the table, while writing unsteadily with his left hand. Detective Duncan then discovered that Stephenson had a gunshot wound on his right arm. On cross-examination, Detective Duncan testified that Stephenson told him that he had been shot in the arm by a Hispanic male at 501 West 12th Street and that he owned a black .380 firearm. On redirect examination, Duncan testified that during his investigation no guns were found at 501 West 12th Street and no evidence was discovered corroborating Stephenson's account that he had been shot by a Hispanic male.

Jeremy Justin Jackson testified that, as a result of his involvement in the shooting, he pled guilty to aggravated robbery in juvenile court in exchange for a reduced sentence and his truthful testimony. He said he took a number of pills on July 1, 2005, and acknowledged writing letters to the defendant, saying that he did not remember many of the events of that night. On July 1, 2005, he and the defendant rode around in a small red car with "Tiffany" and "Christy."[1] They eventually pulled into the Kwik-Sak parking lot, and Jackson called out to some Hispanic males and asked if they "needed some weed." Jackson testified that the men initially declined his offer but then changed their minds. He said he intended to swindle the men by giving them some rolled-up paper rather than marijuana. Before he could do so, the Hispanic men asked his group to follow them to their house. When they arrived at 501 West 12th Street, Jackson again attempted to swindle the men, but before he could complete the transaction, "Tiffany" drove off and headed to John Stephenson's house at 1908 Lynnwood Drive. "Tiffany" and "Christy" took Jackson and the defendant to Stephenson's house and departed.

Although Jackson's testimony is unclear, we discern that the defendant, John Stephenson, and a person named "Nick" drove off in the car of Stephenson's mother, leaving Jackson at 1908 Lynnwood Drive. Jackson later rejoined the three about a block from the victims' house. He testified that he began "blacking out" at this point and remembered only that he followed Stephenson and the defendant through the back door of the victims' house. He said that, as soon as he walked in, he thought the "Spanish" were shooting at them, so he ran back to the car of Stephenson's mother. Jackson then returned with the defendant, Stephenson, and "Nick" to 1908 Lynnwood Drive. Jackson gathered a black gun and the clothes he, the defendant, and Stephenson were wearing in a plastic bag and placed the bag in the backyard. He said he did not see Stephenson or the defendant shoot anyone at 501 West 12th Street, but he was certain that there was gunfire inside the house. On cross-examination, Jackson testified that he took "about eight" Xanax pills on July 1, 2005. He said he never saw a gun in the defendant's hands that night.

[1] Jackson testified that he did not know the last name of "Tiffany" or "Christy."

Tiffany Beaver testified that on the evening of July 1, 2005, she encountered Christy Conner, Jeremy Jackson, and the defendant at a store near a bowling alley. The three got into Beaver's car, and she drove around town for an unspecified period of time. They eventually stopped at the Kwik-Sak, where they encountered some Hispanic men who wished to buy drugs. She followed the Hispanic men to their house but quickly drove off after seeing a police car. Jackson asked her to take him and the defendant to "Jake and John's" house. After she did so, Beaver drove home to the Graymere Apartments with Conner. A police officer then came to her apartment and, while the officer was there, she received a phone call from "everybody" asking her to return to "Jake and John's" house. She and Conner went with the officer and showed him the location where she dropped off Jackson and the defendant. On cross-examination, Beaver testified that the defendant did not have a gun on the night of the shooting.

The defense rested without presenting proof. After deliberations, the jury found the defendant guilty of the attempted second degree murder and attempted especially aggravated robbery of Mario Lacan (Counts 1 and 3) and Ernesto Landin (Counts 2 and 4), and the attempted aggravated robbery of José Rodriguez (Count 5) and Guadelupe Fernandez (Count 6). The trial court sentenced the defendant as a Range I, standard offender to twelve years on each attempted second degree murder and attempted especially aggravated robbery count and to six years on each attempted aggravated robbery count. Finding that consecutive sentencing was appropriate because the defendant was a dangerous offender, see Tennessee Code Annotated section 40-35-115(b)(4), the court ordered that the twelve-year sentences in Counts 1 and 3 run concurrently and that the twelve-year sentences in Counts 2 and 4 run concurrently to each other but consecutively to the effective twelve-year sentence of Counts 1 and 3. The court ordered the six-year sentences in Counts 5 and 6 to run concurrently to all other counts, for a cumulative effective sentence of twenty-four years.

ANALYSIS

The defendant presents three issues for our review: (1) whether the evidence was sufficient to support his convictions; (2) whether the sentence imposed by the trial court was excessive; and (3) whether the trial court erred in imposing consecutive sentences. As we will explain, we agree with the State that the first two claims are without merit. However, because the trial court imposed consecutive sentencing based on the dangerous offender criterion but did not make the factual findings required by Wilkerson, we must remand to the trial court for consideration of whether the Wilkerson factors are present in this case.

I. Sufficiency of the Evidence

Where sufficiency of the convicting evidence is challenged, the relevant question for the reviewing court is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); see also Tenn. R. App. P. 13(e) ("Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond

a reasonable doubt."); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992).

All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. See State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court stated the rationale for this rule:

> This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (1963)).

A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that, on appeal, a convicted defendant has the burden of demonstrating that the evidence is insufficient. See State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

The defendant was convicted of two counts each of attempted second degree murder, attempted especially aggravated robbery, and attempted aggravated robbery. A person commits criminal attempt who, acting with the culpability otherwise required for the offense:

> (1) Intentionally engages in action or causes a result that would constitute an offense, if the circumstances surrounding the conduct were as the person believes them to be;
>
> (2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part; or
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> (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.

Tenn. Code Ann. § 39-12-101(a) (2003).

As relevant here, second degree murder is a knowing killing of another. Tenn. Code Ann. § 39-13-210(a)(1) (2003). Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear. Id. § 39-13-401(a). When either (1) the robbery is accomplished with a deadly weapon *or* (2) the victim suffers serious bodily injury, the offense is aggravated robbery. Id. § 39-13-402(a). When *both* of these aggravating factors are present, the offense is especially aggravated robbery. Id. § 39-13-403(a).

The defendant first argues that the evidence was insufficient to support his convictions for attempted second degree murder because "[t]here was no proof at trial, *other than the testimony of the victims*, showing the [defendant]" attempted to commit murder. (emphasis added). As we understand, he challenges the weight accorded by the jury to the victims' testimony. However, as set out previously, credibility determinations and the weight to be given to the evidence are resolved by the trier of fact, and we will not disturb those conclusions on appeal. The proof at trial, viewed in the light most favorable to the State, showed that the defendant entered the victims' residence carrying a black Lorcin .380 semiautomatic handgun and fired the weapon at Mario Lacan and Ernesto Landin, striking Landin in the arm. This evidence was sufficient for the jury to find the defendant guilty of attempted second degree murder.

The defendant next argues that there was insufficient evidence to support his attempted especially aggravated robbery and attempted aggravated robbery convictions because there was no proof that he possessed or used a deadly weapon. The record belies such a contention. Guadelupe Fernandez, José Rodriguez, and Ernesto Landin each testified that the defendant entered their house, pointed a gun at Rodriguez, and demanded money from him. Fernandez and Rodriguez also testified that the defendant pointed his gun at and demanded money from Fernandez, Landin, and Mario Lacan. Lacan and Landin were shot during this altercation, and both had to be transported to the hospital for treatment of their injuries. Accordingly, we conclude that the proof was sufficient to support the defendant's attempted especially aggravated robbery and attempted aggravated robbery convictions.

II. Sentencing

When an accused challenges the length, range, or manner of service of a sentence, it is the duty of this court to conduct a *de novo* review on the record with a presumption that "the determinations made by the court from which the appeal is taken are correct." Tenn. Code Ann. § 40-35-401(d) (2003). This presumption is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). The presumption does not apply to the legal conclusions reached by the trial court in sentencing the accused or to the determinations made by the trial court which are predicated upon uncontroverted facts. State v. Butler, 900 S.W.2d 305, 311 (Tenn. Crim. App. 1994); State v. Smith, 891 S.W.2d 922, 929 (Tenn. Crim. App. 1994); State v. Bonestel, 871 S.W.2d 163, 166 (Tenn. Crim. App. 1993), overruled on other grounds by State v. Hooper, 29 S.W.3d 1, 9 (Tenn. 2000). However, this court is required to give great weight to the

trial court's determination of controverted facts as the trial court's determination of these facts is predicated upon the witnesses' demeanor and appearance when testifying.

In conducting a *de novo* review of a sentence, this court must consider (a) any evidence received at the trial and/or sentencing hearing, (b) the presentence report, (c) the principles of sentencing, (d) the arguments of counsel relative to sentencing alternatives, (e) the nature and characteristics of the offense, (f) any mitigating or enhancement factors, (g) any statements made by the accused in his own behalf, and (h) the accused's potential or lack of potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-103, -210 (2003); State v. Taylor, 63 S.W.3d 400, 411 (Tenn. Crim. App. 2001). Enhancement factors may be considered only if they are "appropriate for the offense," and "not themselves essential elements of the offense." Tenn. Code Ann. § 40-35-114 (2003).

The party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401, Sentencing Commission Cmts.; Ashby, 823 S.W.2d at 169. In this case, the defendant has the burden of illustrating the sentence imposed by the trial court is erroneous. If our review reflects that the trial court, following the statutory sentencing procedure, imposed a lawful sentence, after having given due consideration and proper weight to the factors and principles set out under the sentencing law and made findings of fact that are adequately supported by the record, then we may not modify the sentence even if we would have preferred a different result. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

A. Sentence Length

As we understand, the defendant asserts that the trial court erred in sentencing him to an effective twenty-four-year sentence, arguing on appeal that he:

> was of the age of majority only a few days prior to the date of the shooting in question. There were no prior crimes or convictions on his record as an adult. As such, the [defendant] would submit under that he has no prior record of past failures at rehabilitation and should be afforded the opportunity as being consistent with the purposes under the 1989 [s]entencing guidelines.

He contends that his sentences are excessive because these were his first criminal offenses committed while an adult and his potential for rehabilitation is good. The State responds, and, as we will explain, we agree that the trial court did not abuse its discretion in imposing the maximum sentences.

The defendant committed the offenses on July 2, 2005, after the effective date of the General Assembly's 2005 amendments to the Criminal Sentencing Reform Act of 1989 ("Reform Act"), which provides that the trial court shall impose a sentence within the range of punishment determined by the defendant's offender classification, while considering the following advisory guidelines:

> (1) The minimum sentence within the range of punishment is the sentence that should be imposed, because the general assembly set the minimum length of sentence for each felony class to reflect the relative seriousness of each criminal offense in the felony classifications; and
>
> (2) The sentence length within the range should be adjusted, as appropriate, by the presence or absence of mitigating and enhancement factors set out in [Tenn. Code Ann.] §§ 40-35-113 and 40-35-114.

Tenn. Code Ann. § 40-35-210(c) (Supp. 2005). The sentence length within the range should be consistent with the purposes and principles of the Reform Act. Id. § 40-35-210(d). Although the court "shall consider" the statutory enhancement factors listed in Tennessee Code Annotated section 40-35-114, these factors are advisory only and the court is not bound by them.

The trial court found applicable the following six enhancement factors: (2) the defendant was a leader in the commission of an offense involving two or more criminal actors; (3) the offense involved more than one victim; (6) the personal injuries inflicted upon, or the amount of damage to property sustained by or taken from, the victim was particularly great, although the court accorded little weight to this factor; (9) applicable to Counts 1 and 2, the defendant possessed or employed a firearm during the commission of the offense; (10) applicable to Counts 3 through 6, the defendant had no hesitation about committing a crime when the risk to human life was high; and (16) the defendant was adjudicated to have committed a delinquent act or acts as a juvenile that would constitute a felony if committed by an adult. See Tenn. Code Ann. § 40-35-114(2), (3), (6), (9), (10), (16) (2006).

Arguing only generally that his sentence is excessive, the defendant does not challenge the application of any of these enhancement factors. As to these factors, we note that it appears the trial court erred in applying the multiple-victim enhancement factor. Each of the indictments charged that the defendant committed an offense against a specific, named victim; and, in such a case, it is inappropriate to apply the multiple-victim enhancement factor. See State v. Imfeld, 70 S.W.3d 698, 706 (Tenn. 2002). This does not affect the sentences, for the trial court's application of the remaining enhancement factors is supported by the record. Accordingly, we conclude that the trial court did not abuse its discretion in sentencing the defendant to the maximum period of incarceration for each offense.

B. Consecutive Sentencing

Finally, the defendant challenges the trial court's imposition of consecutive sentencing. He argues that the trial court failed to make the factual findings that an extended sentence was necessary to protect the public and that the consecutive sentences are reasonably related to the severity of the offenses committed, which were required because the court imposed consecutive sentencing on the basis that the defendant was a dangerous offender. The State, conceding that the trial court did not make these additional findings, nevertheless argues that the sentence of the trial court should be

upheld because it is supported by the record. The State's alternative position, that we should remand to the trial court for determination of whether the evidence supports these factual findings, is correct.

As a general rule, consecutive sentences are imposed at the discretion of the trial court upon its consideration of one or more of the following statutory criteria:

> (1) The defendant is a professional criminal who has knowingly devoted such defendant's life to criminal acts as a major source of livelihood;
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> (2) The defendant is an offender whose record of criminal activity is extensive;
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> (3) The defendant is a dangerous mentally abnormal person as declared by a competent psychiatrist who concludes as a result of an investigation prior to sentencing that the defendant's criminal conduct has been characterized by a pattern of repetitive or compulsive behavior with heedless indifference to consequences;
>
> (4) The defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high;
>
> (5) The defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of defendant's undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical and mental damage to the victim or victims;
>
> (6) The defendant is sentenced for an offense committed while on probation; or
>
> (7) The defendant is sentenced for criminal contempt.

Tenn. Code Ann. § 40-35-115(b) (2006). These criteria are stated in the alternative; therefore, only one need exist to support the appropriateness of consecutive sentencing. Here, the trial court applied, as its sole basis for imposing consecutive sentencing, criterion (4): "The defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high." Id. § 40-35-115(b)(4) (2006). Criterion four has been specifically discussed by our supreme court in State v. Wilkerson, 905 S.W.2d 933 (Tenn. 1995), where the court held:

> [T]he imposition of consecutive sentences on an offender found to be a dangerous offender requires, in addition to the application of general principles of sentencing, the finding that an extended sentence is necessary to protect the public against further criminal conduct by the defendant and that the consecutive sentences must reasonably relate to the severity of the offenses committed.

Id. at 939. This requirement of additional findings is limited to criterion four. See State v. Lane, 3 S.W.3d 456 (Tenn. 1999).

Because the record does not reveal that the trial court made the required Wilkerson findings, we remand this matter for resentencing so that the court may determine whether consecutive sentencing reasonably relates to the severity of the offenses committed and is necessary to protect the public against further criminal conduct by the defendant.

CONCLUSION

Based on the foregoing authorities and reasoning, the judgments of the trial court are affirmed and the matter is remanded for resentencing and for entry of corrected judgments in Counts 3 and 4 to reflect the conviction offense as a Class B felony.

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ALAN E. GLENN, JUDGE